

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.193 OF 1998

SHRI DINESH MILLS LTD., VADODARA

VERSUS

SHRI KEDARNATH R.PANDE

Appearance:

MR SI NANAVATI, Sr.Advocate, Assisted by
MR DG SHUKLA, for the Petitioner

CORAM: MR.JUSTICE S.K.KESHOTE

Date of Order: 03/02/1998

C.A.V. ORDER

#. In this petition, challenge has been made by the petitioner to the order dated 21st August 1997 of the Labour Court, Vadodara, annexure 'A', made in Reference (LCV) No.366 of 1986, under which the domestic enquiry held on the charges framed against the respondent-workman was held to be illegal.

#. The facts of the case, in brief, are that the respondent-workman was given chargesheet-cum-suspension pending enquiry vide memo dated 9.1.86. After holding enquiry, under the order dated 1.2.86 the petitioner ordered for dismissal of the respondent-workman. The petitioner filed an application under section 33(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act 1947'), before the Industrial Tribunal, for getting approval of dismissal of the respondent-workman from the services and the same has been granted on 20th October 1986. The respondent-workman raised an industrial dispute in the matter of his dismissal from services by the petitioner and that dispute has been referred by the State Government for adjudication to the Labour Court at Vadodara, where it was registered as Reference (LCV) No.366 of 1986. The respondent-workman has raised the issue that the domestic enquiry which has been conducted against him on the alleged charges is illegal and improper. It was taken up as a preliminary issue and after recording the evidence of both the parties, under the impugned order, the Labour Court has held the same to

be illegal and improper. Hence this Special Civil Application.

#. The learned counsel for the petitioner, Shri S.I.Nanavati contended that the impugned order of the Labour Court is not only improper and illegal but the same is nullity in law as it has been passed by the said authority without assigning any reasons and without application of mind and only on this ground, this order deserves to be quashed and set aside. In support of this contention, the learned counsel for the petitioner placed reliance on the decision of the Apex Court in the case of M/s.Woolcombers of India Ltd. v. Woolcombers Workers' Union & Anr., reported in AIR 1973 SC 2758. It has next been contended that the order of the Labour Court impugned in the Special Civil Application is passed on conjectures and surmises not warranted by law which is clearly borne out from the fact that in support of the order, the Labour Court has not at all given any reasons or findings to reach to the conclusion that the domestic enquiry held against the workman by the petitioner is improper and illegal.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the petitioner.

#. During the course of arguments, the learned counsel for the petitioner has also read the statement of witnesses which have been produced by both the sides on the preliminary issue.

#. In the case of M/s.Woolcombers of India Ltd. v. Woolcombers Workers' Union & Anr. (supra), their Lordships of the Hon'ble Supreme Court observed that the giving of the reasons in support of their conclusions by judicial and quasi judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decisions of

judicial and quasi judicial authorities to the Supreme Court by special leave granted under Article 136. A judgment which does not disclose the reasons, will be of little assistance to the Court. The Court will have to wade through the entire record and find for itself whether the decision in appeal is right or wrong. In many cases, this investment of time and industry will be saved if reasons are given in support of the conclusions. So their Lordships of the Hon'ble Supreme Court, in the said case concluded that it is necessary to emphasise that judicial and quasi judicial authorities should always give the reasons in support of their conclusions. However, in that case, the Apex Court held that absence of reasons in support the conclusion is indeed a serious flaw in an award. However, the award cannot be set aside simply on that score, if there is evidence on the record in support of the Tribunal's conclusions. Thereafter, the Apex Court has gone into the entire evidence on record and decided the matter. So, if we go by the ratio of the Apex Court on which strong reliance has been placed by learned counsel for the petitioner, it comes out that a reasoned order is expected to be passed from the judicial or quasi judicial authorities, but the order of those authorities may not be set aside only on this count where in support of that order evidence is on the record.

#. This Court cannot be oblivious of the fact that it is only an interlocutory order and the matter pending before the Labour Court in between the parties has not been finally decided. Under this order, only the preliminary issue regarding fairness of the domestic enquiry conducted by the petitioner against the respondent-workman has been decided to be illegal and improper and the consequence thereof is to prove those charges before the Labour Court by the petitioner and if ultimately the charges are proved, then in view of the latest pronouncement of the Apex Court, in the case of L.I.C. v. Central Industrial Tribunal, reported in 1997(1) SCC 59, the order will relate back to the date of dismissal of the respondent-workman. Where an industrial dispute has been raised by workman against the action of the management to dismiss or discharge him from the services and it is referred for adjudication to the Industrial Tribunal or Labour Court, then that authority has to first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice ? So, in all such matters, where this point has been raised by the workman, this preliminary issue has to be decided to which no exception can be taken as it is now no more res-integra. The preliminary issue so

decided either may be in favour of the management or workman, but it is nevertheless only a preliminary issue which does not decide the matter finally. In such matters, in case the affected party considers the matter to be worthy of agitation before the higher Court, then it can be agitated even after the final award. But where the matter is not finally decided and it is only an interlocutory order, there is no justification to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue. A reference in this respect may have to the decision of the Apex Court in the case of The Cooper Engineering Ltd. v. P.P.Mundhe, reported in AIR 1975 SC 1900. It is advantageous to reproduce the observations of the Apex Court, made at para-22 of the said decision:

"We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

#. The petitioner has titled this petition under Articles 226 & 227 of the Constitution of India. Even if it is taken to be a petition under Article 227 of the Constitution of India, then too interference of this Court is not called for in the present case because even if it is taken that some illegality has been committed by the Labour Court in passing of the impugned order, though

I am not expressing any final opinion, still where this Court feels that it will not cause any prejudice to the party challenging the same, it may decline to interfere in the matter. Similarly, where by the impugned order, if it is not resulting in failure of justice to the party concerned, the Court may decline to interfere in the matter. In the present case, as observed earlier, this is only an interlocutory order and if ultimately final decision goes against the petitioner, then while challenging the said award, the petitioner has all right to challenge this order also and this Court has to consider the challenge and has to go into the question of correctness and propriety and legality of the said order and if ultimately this Court finds that the said order is illegal or improper, then the appropriate order may be passed in those proceedings. So it is not the case that the petitioner cannot challenge this order at any point of time. Their Lordships of the Apex Court, in the case of Cooper Engineering Ltd. v. P.P.Mundhe (*supra*), have clearly warned that the party should not be permitted to stall the final adjudication of the industrial dispute by challenging the order, passed by the Labour Court and Industrial Tribunal, on the preliminary issue. The Hon'ble Supreme Court has gone to the extent of saying that it will also be legitimate for the High Court to refuse to intervene at this stage. So I do not find it to be a fit case where otherwise also, interference should be made by this Court sitting under Article 226 of the Constitution in the matter.

#. If we take the matter to be under Article 227 of the Constitution of India, I do not find any justification in extending the jurisdiction of this Court under this Article in the present case. This Court, under Article 227 of the Constitution of India, cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duties and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless the High Court interferes. In the present case, as stated earlier, the preliminary issue has been decided by the Labour Court after taking evidence of both the parties and the main grievance of the learned counsel for the petitioner is that the order impugned is not a reasoned order. But only on this ground, in such case, as held by the Apex Court in the case on which reliance has been placed by learned counsel for the petitioner, the order may not be quashed and set aside. This Court, even in the matter where final orders have been passed by the Labour Court, may decline to interfere under Article 227 of the Constitution of India, where though the Labour

Court has committed grave dereliction of duty or has made flagrant abuse of fundamental principles of law or justice, but no injustice is resulting to the party challenging the said order. This impugned order only decides the preliminary issue and the petitioner has all the right to challenge that order if ultimately the matter is finally decided against it, while challenging the final award of the Labour Court.

##. So taking into consideration the totality of the facts of this case and the decision of the Apex Court in the case of Cooper Engineering Ltd. v. P.P.Mundhe (*supra*), I do not consider it to be a fit case where at this stage, this Court should interfere with the order impugned in this Special Civil Application. As I do not consider it to be a fit case where interference has to be made by this Court in the interlocutory order of the Labour Court, I also do not consider it to be appropriate to examine the matter with reference to the evidence produced by both the sides and decide the matter on merits. However, it is made clear that decision of this Court will not come in the way of the petitioner to challenge this order if ultimately the award is passed against it in the matter by the Labour Court. It is further made clear that this Court has not examined the validity, legality and propriety of the order impugned on merits. In the result, this Special Civil Application fails and the same is dismissed summarily.

(S.K.Keshote, J)

(sunil)